

REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

**IN RE GOOGLE PLAY STORE
ANTITRUST LITIGATION**

THIS DOCUMENT RELATES TO:

Epic Games, Inc. v. Google LLC et al.,
Case No. 3:20-cv-05671-JD

*In re Google Play Consumer Antitrust
Litigation*, Case No. 3:20-cv-05761-JD

State of Utah et al. v. Google LLC et al.,
Case No. 3:21-cv-05227-JD

Match Group, LLC et al. v. Google LLC et al.,
Case No. 3:22-cv-02746-JD

Case No. 3:21-md-02981-JD

**DECLARATION OF MICHAEL J. ZAKEN
IN SUPPORT OF PLAINTIFFS'
OPPOSITION TO DEFENDANTS'
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

Judge: Hon. James Donato

1 I, Michael J. Zaken, declare as follows:

2 1. I am a Partner at Cravath, Swaine & Moore LLP, counsel to Epic Games, Inc. (“Epic”)
3 in the above-captioned actions. I am admitted to appear before this Court *pro hac vice*.

4 2. I submit this Declaration in support of Plaintiffs’ Opposition to Google’s Motion for
5 Partial Summary Judgment.

6 3. I have personal, first-hand knowledge of the facts set forth in this Declaration. If called
7 as a witness, I could and would competently testify to these facts under oath.

8 4. Attached hereto as **Exhibit 1** is a true and correct copy of excerpts from the deposition
9 transcript of [REDACTED], who was deposed in this litigation on February 2, 2022 and February 3,
10 2022.

11 5. Attached hereto as **Exhibit 2** is a true and correct copy of a document produced by
12 Google LLC, Google Ireland Limited, Google Commerce Limited, Google Asia Pacific Pte. Limited
13 and Google Payment Corp. (collectively, “Google”) in this litigation bearing the Bates range GOOG-
14 PLAY-000128863.R to GOOG-PLAY-000128908.R. This document was authenticated by [REDACTED]
15 [REDACTED], a Google employee. (Zaken Declaration Ex. 1 [REDACTED] Tr. 444:17-445:20.)

16 6. Attached hereto as **Exhibit 3** is a true and correct copy of excerpts from the deposition
17 transcript of Matthew Gentzkow, who was deposed in this litigation on March 7, 2023.

18 7. Attached hereto as **Exhibit 4** is a true and correct copy of a document produced by
19 Google in this litigation bearing the Bates range GOOG-PLAY-007035840 to GOOG-PLAY-
20 007035843. This document was authenticated by [REDACTED], a former Google employee. (Zaken
21 Declaration Ex. 5 [REDACTED] Tr. 285:18-286:9.)

22 8. Attached hereto as **Exhibit 5** is a true and correct copy of excerpts from the deposition
23 transcript of [REDACTED], who was deposed in this litigation on December 9, 2021.

24 9. Attached hereto as **Exhibit 6** is a true and correct copy of a document produced by
25 Google in this litigation bearing the Bates range GOOG-PLAY-004146689.R to GOOG-PLAY-
26 004146757.R. This document was authenticated by [REDACTED], a Google employee. (Zaken
27 Declaration Ex. 7 [REDACTED] Tr. 369:13-370:14.)
28

1 10. Attached hereto as **Exhibit 7** is a true and correct copy of excerpts from the deposition
2 transcript of [REDACTED], who was deposed in this litigation on January 13, 2022.

3 11. Attached hereto as **Exhibit 8** is a true and correct copy of excerpts from the Opening
4 Expert Report of B. Douglas Bernheim, served in this litigation on October 3, 2022. The report was
5 authenticated by B. Douglas Bernheim. (Zaken Declaration Ex. 9 Bernheim Tr. 24:1-21.)

6 12. Attached hereto as **Exhibit 9** is a true and correct copy of excerpts from the deposition
7 transcript of B. Douglas Bernheim, who was deposed in this litigation on April 6, 2023.

8 13. Attached hereto as **Exhibit 10** is a true and correct copy of excerpts from the deposition
9 transcript of [REDACTED], who was deposed in this litigation on August 31, 2022.

10 14. Attached hereto as **Exhibit 11** is a true and correct copy of a document produced by
11 Google in this litigation bearing the Bates range GOOG-PLAY-004283892 to GOOG-PLAY-
12 004283896.

13 15. Attached hereto as **Exhibit 12** is a true and correct copy of excerpts from the deposition
14 transcript of [REDACTED], who was deposed in this litigation on September 22, 2022.

15 16. Attached hereto as **Exhibit 13** is a true and correct copy of a document produced by
16 Activision Blizzard (“Activision”) in this litigation bearing the Bates range AB-GOOG-000492 to AB-
17 GOOG-000500. This document has been authenticated by Activision. (Zaken Declaration Ex. 14.)

18 17. Attached hereto as **Exhibit 14** is the Declaration of Authenticity of Domestic Business
19 Records Pursuant to Federal Rules of Evidence 901 & 902 prepared by [REDACTED]

20 [REDACTED].

21 18. Attached hereto as **Exhibit 15** is a true and correct copy of a document produced by
22 Google in this litigation bearing the Bates range GOOG-PLAY4-002193650 to GOOG-PLAY4-
23 002193651.

24 19. Attached hereto as **Exhibit 16** is a true and correct copy of a document produced by
25 Google in this litigation bearing the Bates range GOOG-PLAY4-000339905 to GOOG-PLAY4-
26 000339910. This document was authenticated by [REDACTED], a Google employee. (Zaken
27 Declaration Ex. 17 [REDACTED] Tr. 136:20-137:9.)
28

1 20. Attached hereto as **Exhibit 17** is a true and correct copy of excerpts from the deposition
2 transcript of [REDACTED], who was deposed in this litigation on April 21, 2022.

3 21. Attached hereto as **Exhibit 18** is a true and correct copy of excerpts from the Expert
4 Report of Steven Schwartz, served in this litigation on October 3, 2022. The report was authenticated
5 by Steven Schwartz. (Zaken Declaration Ex. 19 Schwartz Tr. 24:22-26:8.)

6 22. Attached hereto as **Exhibit 19** is a true and correct copy of excerpts from the deposition
7 transcript of Steven Schwartz, who was deposed in this litigation on March 28, 2023.

8 23. Attached hereto as **Exhibit 20** is a true and correct copy of excerpts from the deposition
9 transcript of [REDACTED], who was deposed in this litigation on September 15, 2022.

10 24. Attached hereto as **Exhibit 21** is a true and correct copy of excerpts from the deposition
11 transcript of Hal J. Singer, who was deposed in this litigation on May 12, 2022.

12 25. Attached hereto as **Exhibit 22** is a true and correct copy of a document produced by
13 Google in this litigation bearing the Bates range GOOG-PLAY3-000013195 to GOOG-PLAY3-
14 000013207. This document is a printout of the “Google Payments – Terms of Service Buyer (US)”,
15 dated May 1, 2019, which was available on the payments.google.com website owned and controlled by
16 Google and available at the URL address: [https://payments.google.com/payments/apis-](https://payments.google.com/payments/apis-secure/u/0/get_legal_document?ldo=0&ldt=buyertos&ldr=US)
17 [secure/u/0/get_legal_document?ldo=0&ldt=buyertos&ldr=US](https://payments.google.com/payments/apis-secure/u/0/get_legal_document?ldo=0&ldt=buyertos&ldr=US).

18 26. Attached hereto as **Exhibit 23** are excerpts of a true and correct copy of the Expert
19 Report of Catherine E. Tucker, served in this litigation on November 18, 2022. The report was
20 authenticated by Catherine E. Tucker. (Zaken Declaration Ex. 24 Tucker Tr. 41:24-43:15.)

21 27. Attached hereto as **Exhibit 24** is a true and correct copy of excerpts from the deposition
22 transcript of Catherine E. Tucker, who was deposed in this litigation on March 8, 2023.

23 28. Attached hereto as **Exhibit 25** is a true and correct copy of Exhibit 18 to the Joseph
24 Reiter Declaration In Support of Match Group LLC’s Motion for Partial Summary Judgment (Case
25 No. 3:22-cv-02746-JD, Dkt. 158), titled “Understanding Google Play’s Payments Policy”.

26 29. Attached hereto as **Exhibit 26** is a true and correct copy of a document produced by
27 Google in this litigation bearing the Bates range GOOG-PLAY-000064254 to GOOG-PLAY-
28

1 000064255. This document was authenticated by [REDACTED], a Google employee. (Zaken
2 Declaration Ex. 27 [REDACTED] Tr. 254:25-255:9.)

3 30. Attached hereto as **Exhibit 27** is a true and correct copy of excerpts from the deposition
4 transcript of [REDACTED], who was deposed in this litigation on August 17, 2022.

5 31. Attached hereto as **Exhibit 28** is a true and correct printout of a webpage entitled “In-
6 app Billing Launched on Android Market” from the android-developers.googleblog.com website
7 owned and controlled by Google, as it appeared on May 17, 2023. This webpage was accessed using
8 the URL address: [https://android-developers.googleblog.com/2011/03/in-app-billing-launched-on-](https://android-developers.googleblog.com/2011/03/in-app-billing-launched-on-android.html)
9 [android.html](https://android-developers.googleblog.com/2011/03/in-app-billing-launched-on-android.html).

10 32. Attached hereto as **Exhibit 29** is a true and correct copy of a document produced by
11 Google in this litigation bearing the Bates range GOOG-PLAY-007346079 to GOOG-PLAY-
12 007346157.

13 33. Attached hereto as **Exhibit 30** is a true and correct copy of excerpts from the deposition
14 transcript of [REDACTED], who was deposed in this litigation on January 14, 2022.

15 34. Attached hereto as **Exhibit 31** is a true and correct copy of excerpts from the deposition
16 transcript of [REDACTED], who was deposed in this litigation on September 29, 2022.

17 35. Attached hereto as **Exhibit 32** is a true and correct printout of a webpage entitled
18 “Enrolling in the user choice billing pilot” from the “Play Console Help” section of the
19 support.google.com website owned and controlled by Google, as it appeared on May 18, 2023. This
20 webpage was accessed using the URL address: [https://support.google.com/googleplay/android-](https://support.google.com/googleplay/android-developer/answer/12570971?hl=en)
21 [developer/answer/12570971?hl=en](https://support.google.com/googleplay/android-developer/answer/12570971?hl=en).

22 36. Attached hereto as **Exhibit 33** is a true and correct copy of excerpts from the deposition
23 transcript of [REDACTED], who was deposed in this litigation on September 16, 2022.

24 37. Attached hereto as **Exhibit 34** is a true and correct copy of excerpts from the deposition
25 transcript of [REDACTED], who was deposed in this litigation on September 9, 2022.

26 38. Attached hereto as **Exhibit 35** is a true and correct copy of a document produced by
27 Google in this litigation bearing the Bates range GOOG-PLAY-011378120 to GOOG-PLAY-
28 011378123.

39. Attached hereto as **Exhibit 36** is a true and correct copy of excerpts from the Merits Report of Hal J. Singer, served in this litigation on October 3, 2022. The report was authenticated by Hal J. Singer. (Zaken Declaration Ex. 53 Singer Tr. 21:23-22:16.)

40. Attached hereto as **Exhibit 37** are true and correct copies of (i) an email exchange between counsel to Google and counsel to Epic, on May 9, 2023 and May 10, 2023; and (ii) a letter from counsel to Epic to counsel to Google which was attached to the May 10, 2023 email.

41. Attached hereto as **Exhibit 38** are true and correct copies of (i) an email exchange between counsel to Google and counsel to Epic, on May 11, 2023, May 12, 2023 and May 18, 2023; and (ii) a letter from counsel to Epic to counsel to Google which was attached to the May 18, 2023 email.

42. Attached hereto as **Exhibit 39** is a true and correct copy of excerpts from the deposition transcript of [REDACTED], who was deposed in this litigation on February 10, 2022.

43. Attached hereto as **Exhibit 40** is a true and correct copy of excerpts from the deposition transcript of [REDACTED], who was deposed in this litigation on November 8, 2022.

44. Attached hereto as **Exhibit 41** is a true and correct copy of excerpts from the deposition transcript of Marc S. Rysman, who was deposed in this litigation on March 10, 2023.

45. Attached hereto as **Exhibit 42** is a true and correct printout of a webpage entitled “Android Market: Now available for users”, dated October 22, 2008, from the android-developers.googleblog.com website owned and controlled by Google, as it appeared on May 17, 2023. This webpage is available using the URL address: <https://android-developers.googleblog.com/2008/10/android-market-now-available-for-users.html>.

46. Attached hereto as **Exhibit 43** is a true and correct copy of a document produced by Google in this litigation bearing the Bates range GOOG-PLAY-000439987.R to GOOG-PLAY-000440017.R. This was authenticated by [REDACTED], a Google employee. (Zaken Declaration Ex. 39 [REDACTED] Tr. 305:9-306:5.)

47. Attached hereto as **Exhibit 44** is a true and correct copy of a document produced by Google in this litigation bearing the Bates range GOOG-PLAY-000838161 to GOOG-PLAY-

000838168. This was authenticated by [REDACTED], a Google employee. (Zaken Declaration Ex. 27 [REDACTED] Tr. 274:13-275:3.)

48. Attached hereto as **Exhibit 45** is a true and correct copy of a document produced by Google in this litigation bearing the Bates range GOOG-PLAY-003334312 to GOOG-PLAY-003334347. This was authenticated by [REDACTED] a Google employee. (Zaken Declaration Ex. 30 [REDACTED] Tr. 311:1-312:18.)

49. Attached hereto as **Exhibit 46** is a true and correct copy of a document produced by Google in this litigation bearing the Bates range GOOG-PLAY-007280918 to GOOG-PLAY-007280920. This document was authenticated by [REDACTED], a Google employee. (Zaken Declaration Ex. 5 [REDACTED] Tr. 270:21-271:13.)

50. Attached hereto as **Exhibit 47** is a true and correct copy of a document produced by Google in this litigation bearing the Bates range GOOG-PLAY-007424789 to GOOG-PLAY-007424790. This document was authenticated by [REDACTED], a Google employee. (Zaken Declaration Ex. 10 [REDACTED] Tr. 145:12-146:9.)

51. Attached hereto as **Exhibit 48** is a true and correct copy of a document produced by Google in this litigation bearing the Bates range GOOG-PLAY-007847561 to GOOG-PLAY-007847565. This was authenticated by [REDACTED], an Activision employee. (Zaken Declaration Ex. 12 [REDACTED] Tr. 190:11-191:14.)

52. Attached hereto as **Exhibit 49** is a true and correct copy of a document produced by Google in this litigation bearing the Bates range GOOG-PLAY-011270137 to GOOG-PLAY-011270142. This was authenticated by [REDACTED], a Google employee. (Zaken Declaration Ex. 40 [REDACTED] Tr. 202:1-7.)

53. Attached hereto as **Exhibit 50** is a true and correct printout of a webpage entitled “In-App Billing on Android Market: Ready for Testing”, dated March 24, 2011, from the android-developers.googleblog.com website owned and controlled by Google, as it appeared on May 18, 2023. This webpage is available using the URL address: <https://android-developers.googleblog.com/2011/03/in-app-billing-on-android-market-ready.html>.

E-FILING ATTESTATION

I, Gary A. Bornstein, am the ECF User whose ID and password are being used to file this document. In compliance with Civil Local Rule 5-1(h)(3), I hereby attest that each of the signatories identified above has concurred in this filing.

/s/ Gary A. Bornstein

Gary A. Bornstein